



Concept Paper by Marine Ayvazyan  
March, 2007

## ***The Promotion of Alternative Dispute Resolution (ADR) in Armenia***

### **BACKGROUND**

Alternative Dispute Resolution (ADR) refers to mechanisms for settling conflicts in various spheres of society outside the court system. In many countries, ADR has become an effective approach to resolving disputes in the private sector, because it encourages tolerance and compromise. When applied in conjunction with an effective judiciary, ADR methods such as mediation and arbitration support the development of small and medium enterprises by providing these businesses with a means of conflict resolution, which may be tried before a costly court case is initiated. ADR has numerous other advantages over traditional litigation:

- In a corrupt judicial system, small businesses have almost no chance to win a court battle against a bigger company or against the State, because they have neither the power nor the financial resources to ensure a favorable outcome. With ADR, the parties themselves decide who should help settle their dispute.
- ADR allows participants to avoid the unwanted consequences of traditional litigation by ensuring confidentiality, limiting costs, and bringing parties to a mutually beneficial agreement.
- Because parties engage in dispute resolution voluntarily, they are more likely to accept the outcome of any ADR processes.
- Rather than examining past occurrences and creating win-lose situations, ADR examines future relationships between parties and aims to create a win-win situation. In many technical fields, special expertise is needed to effectively resolve a dispute. ADR allows for a tailored approach to each conflict that encourages experts in a given field to act as mediators or arbitrators.

In November 2004 Eurasia Foundation Representative Office in Armenia contracted Advanced Social Technologies to conduct an assessment of the current state of ADR in Armenia and prospects for its development. More specifically, the assessment sought to (a) identify international best practices in ADR, (b) describe existing Armenian legislation as it relates to ADR, (c) identify key stakeholders in the promotion of ADR in Armenia and describe their potential roles and interests, (d) reveal the major obstacles to the development of ADR in Armenia, and (e) elaborate strategies to overcome these obstacles.

The results of the assessment demonstrated that:

- The overwhelming majority (88%) of small and medium-sized enterprises (SME) surveyed mentioned *litigation* as a way to solve economic disputes. In contrast, only 8 percent of respondents were aware of *arbitration* as a means for resolving disputes, while only 2 percent were aware of *mediation*.
- Only about one fifth of SMEs in Armenia have regular access to *sources of legal information* (company lawyers, consulting services, trainings).
- Most SMEs (84%) believe that it is difficult to find a *reliable neutral party* to facilitate dispute resolution, and therefore direct negotiations or litigation are the best options for resolving commercial disputes.

The assessment also recommended that efforts to promote ADR in Armenia focus on (a) improving current Armenian legislation related to ADR, (b) increasing public awareness of ADR practices, (c)

building the capacities of ADR providers in mediation, and (d) improving access to ADR services for SMEs.

In April 2005, Eurasia Foundation initiated a grant competition for the purpose of increasing the role of ADR as a mechanism for Armenia's small and medium-sized enterprises (SME) to resolve business-related disputes. Within the framework of the competition, Eurasia Foundation awarded grants to three local organizations for the advancement of alternative dispute resolution practices in Armenia. The grant recipients were the **Armenian Young Lawyers Association**, the **Defender of Rights Union**, and the **Union of Builders of Armenia**. These grants were awarded to support pilot projects for:

- Raising awareness among SMEs on ADR,
- Introducing a course on arbitration in six institutions for higher education in Yerevan,
- Supporting the establishment of an Arbitration Court in Yerevan,
- Developing a charter that will regulate the rules and mechanisms for commercial dispute resolution among construction companies, and
- Establishing a Commercial Dispute Resolution Centre for Construction Companies in Yerevan, where trained specialists provide mediation services.

## MAJOR ACHIEVEMENTS

**Union of Builders of Armenia:** This project sought to promote the use of ADR in the construction sector.

- A large public awareness campaign on mediation was implemented for the members of the Union and construction businesses from throughout Armenia;
- A package of documents (A Code of Ethics for SMEs and mediators, Guidelines for Mediation, and statute for the Commercial Dispute Resolution Center) were developed;
- Approximately 120 members of the union were identified as potential candidates for mediators and they received training in this field;
- A clause on mediation was included in the business contracts of Union members;
- A course on mediation was introduced into the curricula of the Russian-Armenian Slavonic University. The course is still being taught;
- Information on mediation was disseminated in 1,000 copies of the Union's periodical;
- Thirty-three businesses joined the Union as a result of the information campaign.

**Armenian Young Lawyers Association:** The goal of the project was to promote Alternative Dispute Resolution (ADR) mechanisms in six regions of Armenia (Yerevan, Syunik, Shirak, Gegharkunik, Tavush and Lori)

- AYLA conducted a large-scale information campaign that included 18 one-day trainings on ADR for 283 entrepreneurs, lawyers and students.
- A five-day TOT session was also conducted for 25 mediators, who will provide free mediation services and conduct similar trainings on mediation in the regions of Armenia.
- Two thousand copies of a Mediation Guide were published to support the promotion of ADR countrywide and 5,000 booklets on ADR and related legislation were disseminated to lawyers, businessmen, governmental structures and international organizations.
- Free on-line and telephone consultations were provided to 186 individuals interested in learning more about ADR.
- Mediation and arbitration courts were created in the organization;
- A functioning web page on ADR [www.arbitration.ayla.am](http://www.arbitration.ayla.am) was created, which includes information on existing legislation, ADR training opportunities, FAQ and publications.

**Defender of Rights Union:** The goal of the project was to promote the Arbitration Court in Armenia by conducting information campaigns and training lawyers and students to provide arbitration services to small and medium-sized businesses.

- Twelve round table discussions, two conferences and TV debates were organized which described the advantages of arbitration over litigation.
- The Law on Arbitration was presented to entrepreneurs, lawyers, students of law and representatives of NGOs and the media.

- One thousand informational leaflets on ADR were published and disseminated to stakeholders. Fifty newspaper and 250 radio announcements were broadcasted to promote the activities of the arbitration court. An increase in the number of businessmen applying to the Arbitration Court was recorded.
- A Code of Ethics was developed for arbitrators.
- A course on arbitration was taught in seven higher educational institutions and at the State Pedagogical Institute. About two hundred students of law completed a course on arbitration. Beyond the planned activities the organization also established a school on arbitration where individuals can pass an in-depth course on Arbitration.
- As a result of the project many private companies included clauses on Arbitration in their business contracts;
- Free Arbitration services were provided to SMEs. Ten cases were reviewed during the course of the project.
- A website on arbitration was created at [www.dataran.am](http://www.dataran.am);
- Recommendations for revising of the Law on Arbitration were presented to the Ministry of Justice for review. Some of these recommendations were included in the newly adopted Law on Arbitration.

#### *For Businesses and Business Associations*

Small and medium-sized businesses still do not fully trust the mechanism of ADR and hesitate to apply to mediation and arbitration courts for resolution of their commercial disputes. Information campaigns targeting businesses both in Yerevan and the regions should be continued in order to generate more support among businesses for ADR. The information campaign should include examples of the successful resolution of commercial disputes through ADR. The information campaigns should also be directed at educating media on ADR.

#### *For lawyers and legal professionals*

There is a need in developing more capacities of lawyers and students to act as mediators and arbitrators in the conflict resolution process. The training on ADR is necessary for acting lawyers and for those students who in the future wish to work as legal consultants in private companies by methods of ADR. Legal professionals also need to cooperate with professional organizations working in the filed in Armenia, like Armenian Young Lawyers Association, Chamber of Advocates of Republic of Armenia and others to obtain knowledge on the benefits of using arbitration in Armenia and share experiences. It will also be beneficial to partner with foreign organizations working in the area to ensure also information on best practices in other countries as well.

Higher Educational Institutions that have law departments should introduce a course on ADR, as a part of their teaching curricula.

Businesses and the legal community should work to develop a roster of attorneys with even minimum experience and skills in ADR and from which disputing parties can choose.

Attorneys who practice ADR or whose practices are substantially civil need to attend a comprehensive training program in ADR and participate in professional development courses. Minimum standards for attorneys the ADR providers should be established. Those standards may specify hours of training needed, experience needed, etc. Also creation of code of ethics for arbiters and its adoption by ADR providers may be part of the standard.

#### *Policy Recommendations*

- A legal review of the newly adopted «Law on Arbitration» is necessary to assess the level of independence of the law from the formal jurisprudence, which will clarify how the specific clauses of the articles (specifically articles #6, #9; parts 3 and 4 of articles#11, part 3 of the 13 article, 14 and 27 articles, and 2 part of 34 article) affect independence of arbiters' resolutions. The results of the legal review will identify the necessity in improvement of the current legislation.

- Civil Code of RA needs to be amended by the new article (as well as the specific changes need to be done in related articles), which will allow introduction of the arbitration methods before the commencement of the court process between disputing parties even if the arbitration clause was not included in the agreement. The judge should announce/introduce this possibility by providing the list of arbiters that can be referred to to start mediation/arbitration or the source from where the list of the arbiters can be drawn should be pointed out. Only in the case when both parties' refuse to use the ADR opportunity, the judge will have the right to reinitiate the court case.
- As currently the law is covering commercial (trade) dispute resolution, the lobbyists should direct their efforts towards expansion of the law to cover non commercial disputes, such as family dispute resolutions, environmental disputes, etc.

*For Donors*

- Donors should provide both financial and technical assistance for the development of the arbitration courts in Armenia, including training of the arbiters.
- Donors should establish coordination committees on ADR promotion to periodically update each other on the types of supported activities in the area. Also some joint activities may be proposed with the local NGOs in order to prevent duplication of efforts. It is very important to involve those international organization that are professionally involved in this field, like CLERP, a USAID contractor that promotes commercial law development in the country and ABA/CEELI that implements juridical reform project.
- Donors should cooperate with local professional associations and practitioners to identify the needs in the area to be able to direct their funding to the needy areas.